

UNITED STATES DISTRICT COURT FOR THE
MIDDLE DISTRICT OF PENNSYLVANIA

ROBERT HAVILAND,	:	3:13-cv-0101
	:	
Plaintiff	:	
	:	
vs.	:	Hon. John E. Jones III
	:	
SCHUYLKILL COUNTY PRISON,	:	
<i>et al.</i> ,	:	
	:	
Defendants	:	

MEMORANDUM

January 14, 2019

Plaintiff, Robert Haviland, initiated this *pro se* civil rights action pursuant to 42 U.S.C. § 1983 while confined at the State Correctional Institution, Houtzdale, Pennsylvania (SCI-Houtzdale).¹ At this stage in the litigation Plaintiff has one claim remaining, alleging that he was subjected to excessive force while incarcerated at the Schuylkill County Prison, Pottsville, Pennsylvania.

On September 5, 2018, Defendants filed a Suggestion of Death stating that Plaintiff died of natural causes on January 15, 2018. (Doc. 98). No survivors were identified in the notice as being the decedent's next of kin.

¹ On November 14, 2019, this matter was reassigned to the undersigned following the passing of our colleague, the Honorable Richard P. Conaboy.

In response to the Suggestion of Death filing by the Defendant, Judge Conaboy issued an Order on September 21, 2018 (Doc. 99), citing to Fed. R. Civ. P. 25(a)(1)², granting Haviland's successor or representative ninety (90) days from the date of this Order in which to notify the Court in writing if either wished to be substituted for the Plaintiff in this action. In accordance with Rule 25(a)(1), the Order specifically warned Haviland's successor or representative that if a motion for substitution was not filed within the relevant time period, this action would be dismissed.

Judge Conaboy directed the Clerk of Court to attempt service of the Order, along with a copy of the Amended Complaint upon Plaintiff's successor or representative, if any, at his or her last known address. As the docket in this matter reflects, copies of the September 21, 2018 Order and Amended Complaint were sent to the Plaintiff's last known address and his sister at an address provided by counsel for the Schuylkill County Prison. The docket further reflects that the

² Federal Rule of Civil Procedure 25(a)(1) provides:

(a) Death.

(1) If a party dies and the claim is not extinguished, the court may order substitution of the proper party. A motion for substitution may be made by any party or by the decedent's successor or representative. If the motion for substitution is not made within 90 days after service of a statement noting the death, the action by or against the decedent shall be dismissed.

mailing was **not** returned by the Post Office to the Clerk of Court, thus we presume that it was received.

As of the writing of this Memorandum, the deadline for filing substitution motion has passed and this Court has not received such a motion nor any correspondence whatsoever from any representative or successor of the Plaintiff. Accordingly, and as set forth in the September 21, 2018 Order and in accordance with Rule 25(a)(1), this matter will be dismissed. An appropriate Order will issue.